Tenth.—That every word on the label affixed to the bottle here complained of is a word of the English language, and that said label does not bear a word, symbol, or representation solely or necessarily foreign in its significance or visual effect.

Eleventh.—That said labels recite the State or Territory in which the gin is made and also the name of the city or town within the State and the name of the manufacturer.

Twelfth.—That the crates seized under the libel herein and containing the bottles in controversy do not recite the State or Territory in which the gin is made; that said crates are not the receptacles in which the gin is offered for sale to the consumer; and that the principal label figuring in this controversy is that upon the bottles.

Thirteenth.—That there is no testimony that any purchaser of a domestic Holland gin has ever been deceived because of a belief that the gin was of foreign origin, and that there is testimony of numerous dealers that in their experience no such mistake has ever occurred.

Fourteenth.—There is no evidence that any purchaser of the Baird-Daniels Holland gin involved here has ever accepted the same in the belief that it was of foreign origin.

CONCLUSIONS OF LAW.

First.—That said bottles of gin are not so labeled or branded as to deceive or mislead a purchaser, and that the same does not purport to be a foreign product, and that said label is not calculated to deceive a purchaser into the belief that the gin contained in said boxes was manufactured in Holland.

Second.—That the Baird-Daniels Co. in applying the word "Holland" to its gin is using a geographical word which by long usage represents a generic term indicating a kind, character, or style of gin; that upon the principal label bearing the word "Holland" the Baird-Daniels Co. has indicated the State or Territory in which the gin is manufactured; and that these facts are within the provisions of regulation 19(*c*) of the Department of Agriculture, and that the requirements of said regulation have been fully complied with by the Baird-Daniels Co. in the labeling of the gin in controversy.

Judgment will therefore be entered dismissing the libel and releasing the seized goods.

Thereafter, on March 2, 1914, an order was entered dismissing the libel and directing the United States marshal to release the goods, in conformity with the foregoing opinion.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

3398. (Supplement to Notices of Judgment 722 and 2549.) Alleged adulteration and misbranding of bleached flour. U. S. v. 625 Sacks of Bleached Flour. Judgment of the Circuit Court of Appeals for the Eighth Circuit, reversing the judgment of the District Court of the United States for the Western District of Missouri for the condemnation, forfeiture, and destruction of the product, affirmed by the Supreme Court of the United States. Case remanded to the District Court for a new trial. (F. & D. No. 1389. S. No. 514.)

On May 10, 1913, there was filed in the Supreme Court of the United States a petition for writ of certiorari to review the decision of the Circuit Court of Appeals for the Eighth Circuit, which reversed the judgment of the District Court of the United States for the Western District of Missouri, under which judgment 625 sacks of flour which had been shipped from Nebraska into the State of Missouri were condemned and forfeited to the United States and ordered to be destroyed. On May 13, 1913, the Lexington Mill & Elevator Co., respondent, joined in the petition for said writ of certiorari, and on May 26, 1913, said writ was granted.

On February 24, 1914, the case having theretofore been argued before the court, the judgment of the Circuit Court of Appeals reversing the judgment of the District Court was affirmed and the case remanded to the District Court

for a new trial, as will more fully appear from the following opinion by the Supreme Court of the United States (Mr. Justice Day delivered the opinion of the court):

The petitioner, the United States of America, proceeding under section 10 of the Food and Drugs Act (34 Stat., 768), by libel filed in the District Court of the United States for the Western District of Missouri, sought to seize and condemn 625 sacks of flour in the possession of one Terry, which had been shipped from Lexington, Nebr., to Castle, Mo., and which remained in original, unbroken packages. The judgment of the District Court, upon verdict, in favor of the Government, was reversed by the Circuit Court of Appeals for the Eighth Circuit (202 Fed., 615), and this writ of certorari is to review the judgment of that court.

The amended libel charged that the flour had been treated by the "Alsop process," so called, by which nitrogen peroxide gas, generated by electricity, was mixed with atmospheric air and the mixture then brought in contact with the flour, and that it was thereby adulterated under the fourth and fifth subdivisions of section 7 of the act, namely, (1) in that the flour had been mixed, colored, and stained in a manner whereby damage and inferiority was concealed and the flour given the appearance of a better grade of flour than it really was, and (2) in that the flour had been caused to contain added poisonous or other added deleterious ingredients, to wit, nitrites or nitrite reacting material, nitrogen peroxide, nitrous acid, nitric acid, and other poisonous and deleterious substances which might render the flour injurious to health. The libel also charged that the flour was adulterated under the first subdivision of section 7, and was misbranded; but the Government does not urge these features of the case here. The verdict was broad enough to cover the charge under the first subdivision of section 7, but in the view we take of the case as to the instruction of the court under subdivision 5 need not be noticed.

The Lexington Mill & Elevator Co., the respondent herein, appeared, claiming the flour, and answered the libel, admitting that the flour had been treated by the Alsop process, but denying that it had been adulterated and attacking the constitutionality of the act.

A special verdict to the effect that the flour was adulterated was returned and judgment of condemnation entered. The case was taken to the Circuit Court of Appeals upon writ of error. The respondent contended that, among other errors, the instructions of the trial court as to adulteration were erroneous and that the act was unconstitutional. The Circuit Court of Appeals held that the testimony was insufficient to show that by the bleaching process the flour was so colored as to conceal inferiority and was thereby adulterated within the provisions of subdivision 4. That court also held—and this holding gives rise to the principal controversy here—that the trial court erred in instructing the jury that the addition of a poisonous substance, in any quantity, would adulterate the article, for the reason that "the possibility of injury to health due to the added ingredient and in the quantity in which it is added, is plainly made an essential element of the prohibition." It did not pass upon the constitutionality of the act, in view of its rulings on the act's construction.

The case requires a construction of the Food and Drugs Act. Parts of the statute pertinent to this case are:

"SEC. 7. That for the purposes of this act an article shall be deemed to be adulterated: * * *

"In case of food:

"First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength. * * *

"Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

"Fifth. If it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health.

* * * * * * *

"SEC. 10. That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this act, and is being transported from one State, Territory, district, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, * * * shall be liable to be proceeded against in any District Court of the United States within the district where the same is found, and seized for confiscation by a process of libel for condemnation. And if such article is condemned as being adulterated or misbranded, or of a poisonous or deleterious character, within the meaning of this act, the same shall be disposed of by destruction or sale, as the said court may direct."

Without reciting the testimony in detail, it is enough to say that for the Government it tended to show that the added poisonous substances introduced into the flour by the Alsop process, in the proportion of 1.8 parts per million, calculated as nitrogen, may be injurious to the health of those who use the flour in bread and other forms of food. On the other hand, the testimony for the respondent tended to show that the process does not add to the flour any poisonous or deleterious ingredients which can in any manner render it injurious to the health of a consumer. On these conflicting proofs the trial court was required to submit the case to the jury. That court, after stating the claims of the parties, the Government insisting that the flour was adulterated and should be condemned if it contained any added poisonous or other added deleterious ingredient of a kind or character which was capable of rendering such article injurious to health; the respondent contending that the flour should not be condemned unless the added substances were present in such quantity that the flour would be thereby rendered injurious to health, gave certain instructions to the jury. Part of the charge, excepted to by the respondent, reads:

"The fact that poisonous substances are to be found in the bodies of human beings, in the air, in potable water, and in articles of food, such as ham, bacon, fruits, certain vegetables, and other articles, does not justify the adding of the same or other poisonous substances to articles of food, such as flour, because the statute condemns the adding of poisonous substances. Therefore, the court charges you that the Government need not prove that this flour or foodstuffs made by the use of it would injure the health of any consumer. It is the character—not the quantity—of the added substance, if any, which is to determine this case."

On the other hand, the respondent insisted that the law is, and requested the court to charge the jury—

"That the burden is upon the prosecution to prove the truth of the charge in the libel, that by the treatment of the flour in question by the said Alsop process it has been caused to contain added poisonous or other added deleterious ingredients, to wit, nitrites or nitrite reacting material, which may render said flour injurious to health.

"And in this connection you are further instructed that it is incumbent upon the Government to prove that any such added poisonous or other added deleterious ingredients, if any contained in said flour, are of such a character and contained in the flour seized in such quantities, conditions, and amounts as may render said flour injurious to health, and unless you find that all of such facts are so proven, you can not find against the claimant or condemn the flour in question under that charge in the libel, and if you fail to so find, your verdict upon that count or charge in the libel must be in favor of the claimant or defendant.

* * * * * * *

"The law does not prohibit the adding of nitrites or nitrite reacting material to flour, and a jury can not find for the Government or against the claimant, even if it be shown that nitrites or nitrite reacting material was added to the flour in question, unless they believe, from a preponderance of the evidence, that such addition, if any, rendered said flour injurious to the health of those who might consume the bread or other foods made from said flour."

It is evident from the charge given and refused that the trial court regarded the addition to the flour of any poisonous ingredient as an offense within this statute, no matter how small the quantity, and whether the flour might or might not injure the health of the consumer. At least such is the purport of the part of the charge above given, and if not correct, it was clearly misleading, notwithstanding other parts of the charge seem to recognize that in order to prove adulteration it is necessary to show that the flour may be injurious to health. The testimony shows that the effect of the Alsop process is to bleach or whiten the flour and thus make it more marketable. If the testimony introduced on the part of the respondent was believed by the jury, they must necessarily have found that the added ingredient, nitrites of a poisonous character, did not have the effect to make the consumption of the flour by any possibility injurious to the health of the consumer.

The statute upon its face shows that the primary purpose of Congress was to prevent injury to the public health by the sale and transportation in interstate commerce of misbranded and adulterated foods. The legislation, as against misbranding, intended to make it possible that the consumer should know that an article purchased was what it purported to be; that it might be

bought for what it really was and not upon misrepresentations as to character and quality. As against adulteration, the statute was intended to protect the public health from possible injury by adding to articles of food consumption poisonous and deleterious substances which might render such articles injurious to the health of consumers. If this purpose has been effected by plain and unambiguous language, and the act is within the power of Congress, the only duty of the courts is to give it effect according to its terms. This principle has been frequently recognized in this court. Lake County *v.* Rollins, 130 U. S., 662, 670:

"Where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction."

Hamilton *v.* Rathbone, 175 U. S., 414, 421:

"The cases are so numerous in this court to the effect that the province of construction lies wholly within the domain of ambiguity, that an extended review of them is quite unnecessary."

Furthermore, all the words used in the statute should be given their proper signification and effect. Washington Market Co. *v.* Hoffman, 101 U. S., 112, 115:

"We are not at liberty," said Mr. Justice Strong, "to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that signification and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, section 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.' This rule has been repeated innumerable times."

Applying these well-known principles in considering this statute we find that the fifth subdivision of section 7 provides that food shall be deemed to be adulterated "if it contain any added poisonous or other added deleterious ingredients *which may render such article injurious to health.*" The instruction of the trial court permitted this statute to be read without the final and qualifying words concerning the effect of the article upon health. If Congress had so intended the provision would have stopped with the condemnation of food which contained any added poisonous or other added deleterious ingredient. In other words, the first and familiar consideration is that if Congress had intended to enact the statute in that form it would have done so by choice of apt words to express that intent. It did not do so, but only condemned food containing an added poisonous or other added deleterious ingredient when such addition might render the article of food injurious to the health. Congress has here in this statute, with its penalties and forfeitures, definitely outlined its inhibition against a particular class of adulteration.

It is not required that the article of food containing added poisonous or other added deleterious ingredients must affect the public health, and it is not incumbent upon the Government, in order to make out a case, to establish that fact. The act has placed upon the Government the burden of establishing, in order to secure a verdict of condemnation under this statute, that the added poisonous or deleterious substances must be such as may render such article injurious to health. The word "may" is here used in its ordinary and usual signification, there being nothing to show the intention of Congress to affix to it any other meaning. It is, says Webster, "an auxiliary verb, qualifying the meaning of another verb by expressing ability, * * * contingency or liability, or possibility or probability." In thus describing the offense Congress doubtless took into consideration that flour may be used in many ways—in bread, cake, gravy, broth, etc. It may be consumed, when prepared as a food, by the strong and the weak, the old and the young, the well and the sick; and it is intended that if any flour, because of any added poisonous or other deleterious ingredient, may possibly injure the health of any of these, it shall come within the ban of the statute. If it can not by any possibility, when the facts are reasonably considered, injure the health of any consumer, such flour, though having a small addition of poisonous or deleterious ingredients, may not be condemned under the act. This is the plain meaning of the words and, in our view, needs no additional support by reference to reports and debates, although it may be said in passing that the meaning which we have given to the statute was well expressed by Mr. Heyburn, chairman of the committee having it in charge upon the floor of the Senate (Congressional Record, vol. 40, pt. 2, p. 1131):

"As to the use of the term 'poisonous,' let me state that everything which contains poison is not poison. It depends on the quantity and the combination.

A very large majority of the things consumed by the human family contain, under analysis, some kind of poison, but it depends upon the combination, the chemical relation which it bears to the body in which it exists as to whether or not it is dangerous to take into the human system."

And such is the view of the English courts construing a similar statute. The English statute provides (s. 3, of the sale of food and drugs act, 1875):

"No person shall mix, color, * * * or order or permit any other person to mix, color, * * * any article of food with any ingredient or material so as to render the article injurious to health."

That section was construed in Hull v. Horsnell, 68 J. P., 591, which involved preserved peas, the color of which had been retained by the addition of sulphate of copper, charged to be a poisonous substance and injurious to health. There was a conviction in the lower court. Lord Alverstone, C. J., in reversing and remitting the case on appeal, said:

"In my opinion, if the justices convicted the appellant of an offence under s. 3 of the sale of food and drugs act, 1875, on the ground that the ingredient mixed with article of food was injurious to health—that the sulphate of copper was injurious to health, and not on the ground that the peas by reason of the addition of sulphate of copper were rendered injurious to health, the conviction is clearly wrong. To constitute an offence under the latter part of s. 3 the article of food sold must, by the addition of an ingredient, be rendered injurious to health. All the circumstances must be examined to see whether the article of food has been rendered injurious to health."

We reach the conclusion that the Circuit Court of Appeals did not err in reversing the judgment of the District Court for error in its charge with reference to subdivision 5 of section 7.

The Circuit Court of Appeals reached the conclusion that there was no substantial proof to warrant the conviction, under the fourth subdivision of section 7, that the flour was mixed, colored, and stained in a manner whereby damage and inferiority was concealed. As the case is to be retried to a jury, we say nothing more upon this point.

As to the objection on constitutional grounds, it is not contended that the statute as construed by the Circuit Court of Appeals and this court is unconstitutional.

It follows that the judgment of the Circuit Court of Appeals reversing the judgment of the District Court must be affirmed and the case remanded to the District Court for a new trial.

Affirmed.

D. F. HOUSTON, *Secretary of Agriculture.*

WASHINGTON, D. C., *September 24, 1914.*

3399. Misbranding [alleged adulteration] of acid phosphate of calcium. U. S. v. 8 Barrels Purporting to Contain Acid Phosphate of Calcium. Decree of condemnation and forfeiture. Product released on bond. (F. & D. No. 2596. I. S. No. 12564-c. S. No. 925.)

On April 15, 1911, the United States attorney for the district of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district court of the United States for said district a libel for the seizure and condemnation of 8 barrels, purporting to contain acid phosphate of calcium, remaining unsold in the original unbroken packages at Boston, Mass., alleging that the product had been shipped by the Provident Chemical Works, New York, N. Y., and transported from the State of New York into the State of Massachusetts, and charging adulteration in violation of the Food and Drugs Act. Adulteration of the product was alleged in the libel for the reason that it contained a poisonous and deleterious ingredient, to wit, arsenous oxid, which rendered it injurious to health, and for the further reason that it had been mixed and packed with a substance, to wit, calcium sulphate, which reduced and lowered and injuriously affected the quality and strength of said food.